



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 15-1

November 19, 2015

Petition of CoxCom, Inc. d/b/a Cox Communications to establish and adjust the basic service tier programming, equipment, and installation rates for the Town of Holland.

RATE ORDER

APPEARANCE:

PETITIONER

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Wayland, MA 01778
FOR: COXCOM, INC. d/b/a COX COMMUNICATIONS

INTERVENORS

Lawrence Mandell
Chairman, Board of Selectmen
Town of Holland
27 Sturbridge Road
Holland, MA 01521
FOR: TOWN OF HOLLAND

I. INTRODUCTION AND PROCEDURAL HISTORY

In this Order, the Department of Telecommunications and Cable (“Department”) approves CoxCom, Inc. d/b/a Cox Communications (“Cox” or “Company”), proposed Maximum Permitted Rates (“MPR”) and Operator Selected Rates (“OSR”), as amended, for basic service tier (“BST”) programming, equipment, and installation rates for the Town of Holland.¹ The Department directs Cox to issue a refund with interest to subscribers with DTA and cableCARD equipment for its equipment overcharges from its assessment of rates in excess the MPRs for DTAs and cableCards. Cox must also file a refund plan with the Department showing: the total number of subscribers affected, the total amount due to subscribers, and its chosen method for implementing a refund within 30 days of date of this Order.

On February 2, 2015, Cox filed Federal Communications Commission (“FCC”) Form 1240² with the Department in which Cox proposed a BST MPR for the Town of Holland. Exh. 1. Cox also filed a FCC Form 1205³ in which the Company proposed regionally aggregated⁴ equipment and installation MPRs for the Town of Holland. Exh. 2. Pursuant to FCC regulations, Cox’s proposed BST programming, equipment, and installation rates became effective on May 2, 2015. 47 C.F.R. § 76.933(g).

On May 19, 2015, the Department issued a Notice of Public Hearing, Order of Notice, and Letter Notice to the Town of Holland. The Department issued its First Set of Information Requests on June 1, 2015. On June 16, 2015, the Town of Holland submitted a petition to intervene in the rate proceeding, which the Department approved on June 23, 2015. The

¹ Information concerning the documents issued by the Department and submitted by Cox and the Town of Holland are available on the Department’s docket page for this proceeding, D.T.C. 15-1 at <https://services.oca.state.ma.us/dtc/frmDocketList.aspx>.

² Citations to Cox’s FCC Form 1240 filed on February 2, 2015 are to Exh. 1.

³ Citations to Cox’s FCC Form 1205 filed on February 2, 2015 are to Exh. 2.

⁴ Cox aggregates its equipment cost at the New England System level. See Exh. 2.

Department received Cox's responses to the Department's First Set of Information Requests on June 17, 2015.⁵

On June 24, 2015, the Department held public and evidentiary hearings. Prior to the start of the hearings, Cox submitted their return of service and proof of publication, which the Hearing Officer accepted into the record. Hearing Transcript ("Tr.") at 4, June 24, 2015. During the evidentiary hearing, Cox submitted a certification that the Hearing Notice was cablecast on the cable system. *Id.* at 16. Cox also submitted an updated response to Department IR 1-2, which the Hearing Officer accepted into the record. *Id.* at 22-23. The Department also issued six record requests during the evidentiary hearing. *Id.* at 25-28, 30-32. Cox submitted its responses to those record requests on July 16, 2015.⁶ On August 6, 2015, the Department issued a Second Set of Information Requests. The Department received Cox's responses to its Second Set of Information Requests on August 20, 2015.

II. ANALYSIS AND FINDINGS

The evidentiary record for this proceeding consists of four exhibits,⁷ which include Cox's FCC Forms 1240 and 1205 for the Town of Holland, seven Department information requests and Cox's responses, the transcripts of the public and evidentiary hearings, and six Department record requests and Cox's responses. After review and consideration, the Department approves Cox's FCC Form 1240 and FCC Form 1205 for the Town of Holland and finds the proposed rates, as amended, to be reasonable in accordance with and subject to the Department's findings

⁵ Citations to the Department's information requests and Cox's Responses are to IR 1-1 *et seq.*

⁶ Citations to the Department's record requests and Cox's responses are to RR-1 *et seq.*

⁷ During the evidentiary hearing, Cox's responses to the Department's information requests were marked as Exh. 3 and Cox's updated response to IR 1-2 was marked as Exh. 4. For ease of reference, Cox's responses to Department information requests will be to IR 1-1 *et seq.*, (*supra* n.5). Citations to IR 1-2, will refer to Cox's updated response to IR 1-2, which includes both the original and update response to the Department's information request.

below. A summary of the approved rates can be found in the Rate Schedule enclosed as Attachment 1.

A. FCC Form 1240 Review

A cable operator must calculate its rates upon specific FCC-created forms incorporating the provisions of its rate regulations. See 47 C.F.R. §§ 76.922, 76.930. A cable operator is allowed to update annually its BST programming rates to account for inflation; changes in the number of regulated channels; and changes in external costs, including programming costs, copyright costs, and franchise related costs (“FRCs”). 47 C.F.R. § 76.922(e). To adjust the rates on the FCC Form 1240 for projections in external costs, or for projected changes to the number of regulated channels, the cable operator must demonstrate that its projections are reasonably certain and reasonably quantifiable. See 47 C.F.R. §§ 76.922(e)(2)(ii)(A), 76.922(e)(2)(iii)(A). Projections involving copyright fees, retransmission consent fee costs, other programming costs, FCC regulatory fees, and cable specific taxes are presumed to be reasonably certain and reasonably quantifiable. See 47 C.F.R. § 76.922(e)(2)(ii)(A). Cable operators may also project for increases in FRCs to the extent they are reasonably certain and reasonably quantifiable. *Id.* FRC projections, however, are not presumed to be reasonably certain and reasonably quantifiable. *Id.*

The Department reviews rate adjustments on an FCC Form 1240 pursuant to the FCC’s rate regulations. See 47 C.F.R. § 76.922(a). Specifically, the FCC directs local rate regulators, such as the Department, to ensure that the approved rates are in compliance with the Communications Act of 1934, as amended (“Communications Act”), and do not exceed the maximum permitted charges calculated using the FCC’s rate forms. *Id.* The Department may accept, as compliant with the statute, BST rates that do not exceed the approved MPR as

determined by federal regulations. See 47 C.F.R. §§ 76.922(a), 76.922(c). In addition, the Department shall approve only those rates that it deems reasonable. See 47 U.S.C. § 543; 47 C.F.R. § 76.937(d)-(e); G. L. c. 166A, §§ 2, 15. The cable operator has the burden of proving that its proposed BST programming rates comply with Section 623 of the Communications Act, and implementing regulations. See 47 U.S.C. § 543; 47 C.F.R. § 76.937(a) (regulation assigning the burden of proof to the cable operator); Implementation of Sections of the Cable Television Consumer Protection & Competition Act of 1992: Rate Regulation, Report & Order & Further Notice of Proposed Rulemaking, 8 F.C.C.R. 5631, at 5716, ¶ 128 (May 3, 1993) (“FCC Rate Order”).

Cox has proposed a MPR of \$25.67, an increase of \$4.17 over the current MPR of 21.50, but its proposed OSR remains unchanged at a rate of \$10.11 per month. See Exh. 1; Tr. at 18. In this proceeding, the Department sought information concerning changes to Cox’s BST channel lineup and the introduction of a Broadcast Surcharge. IR 1-5; IR 1-6; Tr. at 23-29. The FCC Form 1240 consists of “a series of calculations, involving both the projection of future events and an accounting of events which are known to have happened” and implements the federal laws and regulation “pertaining to the costs of a system’s regulated tiers.” *Instructions FCC Form 1240 Annual Updating of Maximum Permitted Rates for Regulated Cable Services* (“FCC Form 1240 Instructions”), at 1 (July 1996). The Department reviews the FCC Form 1240 to verify the accuracy of the data on the form and that the data was calculated in compliance with the relevant federal laws and regulations. 47 C.F.R § 76.922(a). Once the Department has determined the accuracy of the data and that data was calculated in accordance with federal laws and regulations, the MPR is presumed reasonable. *Id*; *FCC Form 1240 Instructions* at 5. The Department then compares the OSR to the MPR on the FCC Form 1240. 47 C.F.R. § 76.922

An OSR is compliant with federal laws and regulations and considered reasonable if the OSR does not exceed the approved MPR. *See Id.* § 76.922(a), 76.922(c). After review and investigation, the Department has verified the accuracy of the data on Cox’s FCC Forms 1240 for the Town of Holland and determined that the data was calculated in compliance with federal laws and regulations. *See* Exh. 1. The Department also finds that the proposed OSR does not exceed the approved MPR the Town of Holland. *Id.* As such, the proposed OSR complies with federal laws and regulation and is therefore reasonable. 47 U.S.C. § 543; G.L. c. 166A, § 15; 47 C.F.R. § 76.922(a), 76.922(c). Accordingly, the Department approves Cox’s FCC Form 1240 for the Town of Holland. *See* Exh. 1. A summary of the approved BST programming rates can be found in the enclosed Rate Schedule. *See* Attachment 1.

1. Broadcast Surcharge

Cox has elected to depict its BST rate in two parts, \$7.11 for the monthly BST service and \$3.00 as a Broadcast Surcharge. *See* IR 1-6; Tr. 18. Cox asserts it created this charge separation “to better communicate to customers the rising costs associated with providing broadcast TV on our lineups, taking into account the types of costs reflected in the FCC Form 1240 external costs.” IR 1-6. The \$3.00 monthly fee is below the monthly rate for external costs in the projected period and even below the monthly per subscriber rate for retransmission consent cost in the projected period. IR 1-6; Tr. 24. Cox is not prohibited under federal rules from depicting the BST rate in two parts and the Broadcast Surcharge is set at a level that is close to, but below its monthly retransmission consent costs per subscriber for the projected period. The Department will continue to monitor the assessment of the Broadcast Surcharge to ensure it continues to comply with federal and state laws and regulations and does not cause subscriber confusion concerning the OSR for BST programming.

2. Cox's BST Channel Line Up

The Department in reviewing Cox's FCC Form 1240 noticed a discrepancy between the number of channels reported as a part of Cox's BST channel line up and the number of channels advertised as available to subscribers of BST programming. *See* IR 1-5. Cox's FCC Form 1240 lists 16 total channels available to BST subscribers, while Cox's website lists 28 channels, plus 11 High-Definition Channels, and 4 optional channels available to BST subscribers. *Id.* Cox, in response to an information request from the Department, explained that prior to its transition to an all-digital network, Cox subscribers without a receiver or cableCARD could access the 16 analog channels identified on the channel line up included with its FCC Form 1240. *Id.* However, after Cox completed its all-digital transition, requiring all subscribers to use a receiver, DTA, or cableCARD, subscribers gained access to digital and HD channels, which increased the total number of available channels to BST subscribers. *Id.* During the evidentiary hearing, the Department questioned whether the increase in the number of available channels would affect the OSR Cox plans to charge subscribers. *Tr.* at 28-29. Cox indicated that it has no current plans to adjust its OSR or otherwise adjust its rate in the future to charge for these additional channels. *Id.*

Cox also removed WBZ, a CBS affiliated broadcast station, from its BST channel line up. *See* Exh. 1. The Town of Holland is very concerned over the loss of WBZ. *See* Town of Holland Petition to Intervene at 1 (June 12, 2015); *Tr.* at 6-8, 10-13. In particular, the Town of Holland is concerned that Cox subscribers have no Boston-based major broadcast stations, despite the importance of news and information reported out of Boston to the community. *Tr.* at 7. The Town of Holland brought to the proceeding a petition signed by hundreds of residents requesting WBZ to be returned to the BST channel line up. *Id.* at 7; 10-11. Cox states that WBZ

was removed from its BST channel line up on March 31, 2015 due to the expiration of its channel carriage consent agreement to carry the station. *Id.* at 25. Without such an agreement, Cox is prohibited from carry WBZ in the town of Holland and does not currently have the right to carry any other major broadcast station out of Boston. *See* RR-2. Typically, a cable provider will only carry one station affiliated with a broadcast network and Cox's ability to carry Boston broadcast stations is limited because the Town of Holland has been designated a part of the Springfield-Holyoke Designated Market Area ("DMA"). *Id.*; *See also*, 47 C.F.R. § 76.56. The Department will continue to review the Town of Holland's concerns, but specific actions with regard to channel carriage are outside the scope of the Department's examination of Cox's FCC Form 1240 and generally outside the Department's jurisdiction. *See* 47 C.F.R. §§ 76.59, 76.922.

B. FCC Form 1205 Review

Cable Operators use FCC Form 1205 to calculate rates for installations and equipment such as converters and remote controls, based upon actual capital costs and expenses. *FCC Form 1205 Instructions for Determining Costs of Regulated Cable Equipment and Installation* ("*FCC Form 1205 Instructions*"), at 1 (June 1996). A cable operator annually prepares its FCC Form 1205 using information from its previous fiscal year. In this proceeding, Cox's FCC Form 1205 is for the fiscal year ending December 31, 2013. *See* Exh. 2. In accordance with the FCC's regulatory requirements, subscriber charges established by FCC Form 1205 may not exceed charges based on actual costs. 47 C.F.R. § 76.923(a)(2). The cable operator has the burden to demonstrate that its proposed rates for equipment and installations comply with Section 623 of the Communications Act and its implementing regulations. *See* 47 U.S.C. § 543; 47 C.F.R. § 76.937(a) (regulation assigning the burden of proof to the cable operator); *FCC Rate Order* at

5716, ¶ 128. With regard to equipment and installation rates, Cox has chosen to aggregate its cost at the New England System level. *See* Exh. 2.

The Department first examines the changes in Cox's MPRs for installations and equipment. As part of this examination, the Department reviews the information and calculations Cox reported on its Form 1205, and the accompanying explanation of the calculations. The Department also considers Cox's responses to Department inquiries and testimony from the evidentiary hearing. As set forth below, the Department finds that Cox's Form 1205 establishes MPRs for installations and equipment that comply with applicable law. *See* 47 C.F.R. § 76.923.

Cox has proposed decreasing its MPR for: addressable converters from \$2.96 to \$2.74; DTAs from \$1.79 to \$1.75; cableCARDS from \$1.86 to \$1.84; remotes from \$0.15 to \$0.11; digital installation and unwired homes installation from \$73.44 to \$70.55; prewired homes installation from \$28.25 to \$27.14; additional outlet at and after initial installation from \$33.90 to \$32.56; and at home service visits for change services and unrelated to equipment or signal delivery from \$33.90 to \$32.56. The MPR for in office changes of service remains unchanged at \$1.99.

As part of its examination, the Department sought an explanation of the methodology and calculations used to determine the current provision for depreciation, accounting practices concerning equipment, and the methodology and basis for determining Total Maintenance Service Hours for DTAs. *See* IR 1-1; IR 1-2; IR 1-4; RR-5; RR-6. Cox explained that its current provision for depreciation is taken from its fixed asset ledger; the equipment is depreciated over three years using straight line depreciation; and differences between the net book value and depreciation expenses concern a difference between deriving the current provision for

depreciation and the removal of depreciation from prior periods reducing net book value. *See* IR 1-1; IR 1-2; RR-6. Net book value is affected by depreciation from prior periods and the current provision for depreciation is derived from applying the applicable depreciation rate to gross book value for the 2013 period. RR-6. Cox also explained that gross book values are taken directly from their fixed asset ledger and the values are lower on the Form 1205 for Fiscal Year 2013 than on the Form 1205 for Fiscal Year 2012 due to the disposals performed to removed dollars from equipment no longer in service or inventory. RR-5. The Total Maintenance Service Hours for DTAs is determined by dividing the estimated cost per churned box by the calculated Hourly Service Charge. IR 1-4. The Department finds Cox's explanations, methodologies, and calculations to be in accord with its requirements under the federal rules. 47 C.F.R. §§ 76.923, 76.924. Cox has also completed the FCC Form 1205 in accordance with the general instructions provided by the FCC. *See FCC Form 1205 Instructions* at 3. Cox used financial data from the company's general ledger and subsidiary records maintained in accordance with generally accepted accounting principles, enabled identification of appropriate investments, revenues, and expenses, and appropriately allocated its investment, revenues, and expenses. *See* Exh. 2. Accordingly, the Department accepts Cox's explanations and current methodologies and calculations used to determine these equipment related costs.

The Department next considers Cox's OSRs for equipment and installations. Cox did not include its proposed OSRs on its FCC Form 1205; rather the Company included a Proposed Rate Structure document with its FCC Forms 1240 and 1205 filings. *See* Exh. 1; Exh. 2. In the Department's review of Cox's FCC Form 1205 and Proposed Rate Structure document, the Department found a discrepancy between the Company's proposed MPRs and its proposed OSRs for DTAs and cableCARDS. The Department sought an explanation for the discrepancy between

the proposed MPR of \$1.749 and OSR of a \$1.79 for a DTA and the proposed MPR of \$1.8421 and OSR of \$1.86 for a cableCARD. IR 2-1. Cox explained that the final version of the FCC Form 1205 included an adjustment to some tax rates that resulted in changes in the MPRs for DTAs and cableCARDS that were not properly reflected in the OSRs for DTAs and cableCARDS. *Id.* As a result, Cox has been assessing an OSR for DTAs and cableCARDS in excess of the proposed MPRs since April 2015. *Id.* According, the Department directs Cox to issue refunds with interest⁸ to its DTA and cableCARD subscribers to account for the equipment overcharges. 47 C.F.R. § 76.942. Cox is directed to file a refund plan within 30 days of the date of this order showing the total number of subscribers affected, the total amount due to subscribers, and its chosen method for implementing the refund.⁹

Cox in reconsidering its OSRs for DTAs and cableCARDS has proposed an OSR of \$1.74 for DTAs and an OSR of \$1.84 for cableCARDS. *See* Email from Alan D. Mandl, Esq., Attorney for Cox, to Michael Scott, Hearing Officer, Department of Telecommunications and Cable (Sept. 2, 2015)(on file with Department). The revised OSRs are at or below the proposed MPRs for DTAs and cableCARDS. *See* Exh. 2. The Department's review of all other proposed OSRs on the Proposed Rate Structure document shows each OSR below the corresponding MPR. *See* Exh. 2. Thus, the Department finds that Cox's FCC Form 1205 for the Town of Holland and its amended OSRs for DTAs and cableCARDS have been prepared in compliance with federal laws and regulations and are reasonable. 47 C.F.R. § 76.923; G.L. c. 166A, §15. According, the Department approves Cox's FCC Form 1205 for the Town of Holland. A summary of the

⁸ "Refunds shall include interest computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments. 47 C.F.R. § 74.942(e).

⁹ Under federal law, Cox has discretion to choose from two methodologies for implementing a refund. *See* 47 C.F.R. § 76.942(d).

approved equipment and installation rates can be found in the enclosed Rate Schedule. *See* Attachment 1.

III. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That Cox's FCC Form 1240, as filed on February 2, 2015 is approved; and it is

FURTHER ORDERED: That Cox's FCC Form 1205, as filed on February 2, 2015, is approved; and it is

FURTHER ORDERED: That Cox's amended OSRs for DTAs and CableCARDS are approved; and it is

FURTHER ORDERED: That Cox is to issue a refund with interest to subscribers with DTA and cableCARD equipment for its equipment overcharges from its assessment of rates in excess the MPRs for DTAs and cableCards;

FURTHER ORDERED: That Cox file a refund plan with the Department showing: the total number of subscribers affected, the total amount due to subscribers, and its chosen method for implementing a refund within 30 days of date of this Order.

By Order of the Department



Karen Charles Peterson, Commissioner

RIGHT OF APPEAL

Pursuant to G. L. c. 25, § 5 and G. L. c. 166A, § 2, an appeal as to matters of law from any final decision, order or ruling of the Department may be taken to the Supreme Judicial Court for the County of Suffolk by an aggrieved party in interest by the filing of a written petition asking that the Order of the Department be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Department within twenty (20) days after the date of service of the decision, order or ruling of the Department, or within such further time as the Department may allow upon request filed prior to the expiration of the twenty (20) days after the date of service of said decision, order or ruling. Within ten (10) days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court for the County of Suffolk by filing a copy thereof with the Clerk of said Court. Appeals of Department Orders on basic service tier cable rates, associated equipment, or whether a franchising authority has acted consistently with the federal Cable Act may be brought to the Federal Communications Commission pursuant to 47 C.F.R. § 76.944.